

16 No. June Term, 1866

COMMON PLEAS.

CHARLES PAGE

vs.

JOSEPH T. VANKIRK AND
E. D. MARSHALL.

BILL IN EQUITY.

L. R. FLETCHER,

Solicitor for Plaintiff.

In the Court of Common Pleas for the City
and County of Philadelphia.

SITTING IN EQUITY.

Between CHARLES PAGE, Plaintiff,
and

JOSEPH T. VANKIRK and E. D. MARSHALL, Defendants.

Your orator complains and says :

First. That he entered into copartnership with the defendants on the eighth day of January, A. D. 1866, in writing, under the firm of Vankirk and Company, to carry on the business of rolling and manufacturing sheet brass, and other metal tubings, and chandeliers and gas fixtures generally, without any fixed term or limitation.

Second. The said Joseph T. Vankirk and Charles Page contributed to the capital stock of the said firm, the stock, machinery and other assets, of the late firm of Vankirk & Co., as they stood entered on the books of the said late firm, which were agreed to be of the value of sixty-five thousand dollars, whereof the said Joseph T. Vankirk was credited with the sum of fifty-five thousand dollars as his contribution to the capital stock of the present firm, and Charles Page was credited with the sum of ten thousand dollars as his contribution to the said capital stock, and the said Elijah D. Marshall contributed the sum of thirty-five thousand dollars in cash to the said capital stock.

Third. That the said copartners were to share in the net profits of the business of said copartnership in proportion to their respective contributions to the capital stock of said copartnership.

Fourth. That each of the said copartners were entitled to draw out of the concern the sum of two thousand dollars per annum as a salary, which sum was to be charged to the expense account, as one of the expenses of the copartnership before any division of the profits was made.

Fifth. That the said Joseph T. Vankirk has the exclusive charge and control of the financial business of said firm.

Sixth. That the said Joseph T. Vankirk has allowed the notes, drafts and acceptances of the said firm to be protested, when there was sufficient funds to the credit of the firm in bank to meet them, thereby weakening and impairing the credit and business-standing and reputation of said firm and the individual members thereof.

Seventh. That the said Joseph T. Vankirk has used the funds belonging to the said firm for the payment of his private debts, in fraud of your orator.

Eighth. That the said Joseph T. Vankirk has given the firm notes in settlement of his private and individual debts without the consent of, and in fraud of your orator.

Ninth. That the said Joseph T. Vankirk has used funds belonging to the firm to make improvements upon his private property, without the consent of the said plaintiff, and in fraud of your orator.

Tenth. That the said Joseph T. Vankirk has sold machinery and fixtures belonging to said firm, without the knowledge or consent of the said plaintiff, and in fraud of your orator.

Eleventh. That the said Joseph T. Vankirk keeps a house² and employs a man for his own private use and advantage, and has used the funds of the said firm to pay for the keeping of the said house² and the hire of said man, without the consent of the said plaintiff, and in fraud of your orator.

Twelfth. That the said Joseph T. Vankirk did require the employees of the said firm, and others, to do carpenter and other work upon his private dwelling-house, they being paid out of the funds of said firm, without the consent of the said plaintiff, and in fraud of your orator.

Thirteenth. That the said Joseph T. Vankirk sold machinery of great value (to a friend) for less than its value, and applied the money to his own use, and did not enter the same upon the books of the firm, without the consent of the plaintiff and in fraud of your orator.

Fourteenth. That the said Joseph T. Vankirk allowed certain of his relations living near the factory of the said firm to use the coal belonging to the said firm, without charge, and without the consent of the said plaintiff, and in fraud of your orator.

Fifteenth. That the business of the said firm is managed and controlled by the said defendants without consulting the said plaintiff, and without his consent, to the prejudice of and in fraud of the rights of your orator.

Sixteenth. That the said Joseph T. Vankirk, on the seventh day of August, A. D. 1865, mortgaged the mill, steam-engine, shafting, belting, machinery, fixtures, buildings and rolling-mill, belonging to the then firm of Vankirk & Co., without the knowledge or consent of the plaintiff, and for his own use and advantage, for the sum of two thousand four hundred and fifty dollars; which said mortgage was satisfied on the sixteenth day of June, A. D. 1866, the said Joseph T. Vankirk using the funds of the said firm for this purpose, in fraud of your orator.

Seventeenth. That the said Joseph T. Vankirk has drawn more money from the firm than he was entitled to draw, and has refused to allow the plaintiff to draw that which he was entitled to draw, in fraud of your orator.

Eighteenth. That your orator has been informed and verily believes that unless the business of the said firm is at once wound up, and the management of its affairs taken from the said Joseph T. Vankirk, it will, in a short time, become insolvent.

Nineteenth. Your orator prays the following relief:

First. That an account may be taken of all and every the said copartnership dealings and transactions, from the time of the commencement of the said copartnership until the time of the expiration thereof, and also an account of all moneys received and paid by your orator and the said defendants, respectively, in regard thereto.

Second. That the said defendants may be ordered to pay to your orator what, if anything, shall, upon the taking of the said account, appear to be due to him. Your orator is ready and willing, and hereby offers to pay to the said defendants what, if anything, shall upon the taking of said account appear to be due to the said defendants.

Third. That a receiver be forthwith appointed to take into possession all the partnership property of every kind and description, books, papers, accounts, vouchers, goods, chattels and effects, and to hold the same subject to the order of the Court.

Fourth. That the said defendants may be restrained by the order and injunction of this honorable Court from collecting, receiving or intermeddling with the copartnership property, effects, papers, accounts, moneys and vouchers until the further order of this Court.

Fifth. That the said copartnership may be dissolved, and that your orator may have such further and other relief in the premises as to justice may appertain, and to your honors may seem meet.

L. R. FLETCHER,
Solicitor for Plaintiff.